

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed March 9, 2007 ("Office Action"). At the time of the Office Action, Claims 1-11, 13-16, 18-36, and 38-52 were pending in the application. In the Office Action, the Examiner rejects Claims 1-11, 13-16, 18-36, and 38-52. Applicants respectfully request reconsideration and allowance of all pending claims.

Section 103 Rejections

The Examiner rejects Claims 1-11, 13-15, 21-36, 38-40, 46, 47, and 49-52 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,192,404 B1 issued to Hurst, et al. ("*Hurst*") in view of U.S. Patent No. 6,636,887 issued to Augeri ("*Augeri*"). The Examiner rejects Claims 16, 18-20, 41-45 and 48 under 35 U.S.C. 103(a) as being unpatentable over *Hurst* in view of U.S. Patent No. 5,471,461 issued to Engdahl, et al. ("*Engdahl*"), in view of *Augeri* and further in view of U.S. Patent No. 6,791,981 B1 issued to Novaes ("*Novaes*"). Applicants respectfully request reconsideration and allowance of Claims 1-11, 13-16, 18-36, and 38-52.

The cited references fail to support the rejection of Claim 1 for at least two reasons. First, the cited references fail to teach, suggest, or disclose "calculating a delay period based at least in part on . . . a network address associated with the at least one node" as recited in Claim 1. Second, the Office Action fails to properly establish a motivation for combining the teachings of *Hurst* and *Augeri*.

First, the cited references fail to teach, suggest, or disclose "calculating a delay period based at least in part on . . . a network address associated with the at least one node" as recited in Claim 1. In the Office Action, the Examiner relies on *Augeri* for this aspect of Claim 1. (Office Action; page 3). *Augeri* generally discloses a tele-jam system that comprises a telephony server that is communicatively coupled to multiple client devices via a network. (Abstract). According to *Augeri*, a musician may use a client device to transmit music signals to other remote client devices that are associated with other musicians. (Col. 1, lines 13-27; col. 4, lines 33-43). Thus, *Augeri* discloses a system that allows musicians that are in different locations to interact with one another. (Abstract). *Augeri* further describes a method to test the latency between a particular client device and the telephony server. (Col. 6, lines 49-59). In particular, *Augeri* explains that the telephony server sends a test packet,

including the originator network address, to the client device. (Col. 6, lines 60-67). The client reads the originator network address and sends a response packet back to the server. (Col. 6, line 60 – col. 7, line 3). The telephony server determines latency based on the time difference between sending the test packet and receiving the response. (Col. 6, line 60 – col. 7, line 3).

Notably, the only network address mentioned in *Augeri* is the network address of the telephony server. *Augeri* specifically states that the telephony server includes the “*originator* network address” in the test packet. (Col. 6, lines 63-64) (emphasis added). *Augeri* explains that the “client apparatus receives test packet, reads *originator* address, adds time stamp (or does not add time stamp) and sends packet back to server.” (Col. 6, lines 65-67) (emphasis added). Thus, the only network address mentioned in *Augeri* is the network address of the telephony server, which is the device that generates and sends the test packet. (Col. 6, lines 63-64).

In contrast to *Augeri*, Claim 1 is directed to “calculating a delay period based at least in part on . . . a network address associated with the at least one node” that receives the “query sent from a caller node.” Claim 1 recites “a query sent from a caller node” that is “received by at least one of a plurality of nodes on a network.” Claim 1 further recites “calculating a delay period based at least in part on . . . a network address associated with *the at least one node*.” (Emphasis added). As shown above, *Augeri* only mentions the originator network address of the device that generates and sends the test packet. *Augeri* does not mention a network address associated with a device that receives the test packet. Accordingly, *Augeri* does not teach, suggest, or disclose “calculating a delay period based at least in part on . . . a network address associated with *the at least one node*.” (Emphasis added). In addition, merely including the originator network address in the test packet in *Augeri* does not teach, suggest, or disclose “calculating a delay period based at least in part on . . . a network address” as recited in Claim 1. Because the cited references fail to teach, suggest or disclose these aspects of Claim 1, the cited references fail to support the rejection of Claim 1.

Second, the Office Action fails to properly establish a motivation for combining the teachings of *Hurst* and *Augeri*. To modify a reference under 35 U.S.C. § 103, “there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference.” MPEP §2143. In the Office Action, the Examiner states:

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify *Hurst* in view of *Augeri* to calculate a delay period based on at least in part on [sic] a network address associated with the at least one node. One would be motivated to do so because it is an efficient way to prevent network traffic.

(Office Action; pages 3-4). As shown above, neither *Hurst* nor *Augeri* teach, suggest, or disclose “calculating a delay period based at least in part on . . . a network address associated with the at least one node” as recited in Claim 1. Accordingly, neither *Hurst* nor *Augeri* teach that this step “is an efficient way to prevent network traffic” as asserted by the Examiner. Thus, neither *Hurst* nor *Augeri* provide a motivation for the proposed combination. Consequently, it appears that the proposed combination of *Hurst* and *Augeri* is based on impermissible hindsight reconstruction. Applicants remind the Examiner that it is improper to use hindsight having read the Applicants’ disclosure to arrive at an obviousness rejection. *In re Fine*, 837 F.2d 1071, 1075, 5 U.S.P.Q. 2d 1596, 1600 (Fed. Cir. 1988). Because the Office Action fails to properly establish a motivation for combining the teachings of *Hurst* and *Augeri*, the rejection of Claim 1 is improper. For at least the foregoing reasons, Applicants respectfully request reconsideration and allowance of Claim 1.

In rejecting Claims 6, 16, 21, 26, 31, 41, and 46-52, the Examiner employs rationale that is analogous to that used to reject Claim 1. Accordingly, for reasons analogous to those stated above with respect to Claim 1, Applicants respectfully request reconsideration and allowance of Claims 6, 16, 21, 26, 31, 41, and 46-52.

Claims 2-5, 7-11, 13-15, 18-20, 22-25, 27-30, 32-36, 38-40, and 42-45 depend from independent claims shown above to be allowable. In addition, these claims recite further elements that are not taught, suggested, or disclosed by the cited references. For example, the cited references fail to teach, suggest, or disclose that “each of the plurality of nodes on the network calculates a respective delay period by multiplying the delay constant by its own network address” as recited in Claim 4. In the Office Action, the Examiner relies on *Hurst* for this aspect of Claim 4. *Hurst* generally describes a method for determining the time-to-

live (TTL) distances between a base node and other nodes in a network. (Abstract). According to *Hurst*, the base node generates multiple query messages, and each query message comprises a different “TTL parameter value.” (Col. 6, ll. 25-36). *Hurst* explains that a TTL parameter value may represent a number of network hops. (Col. 1, ll. 47-56). After generating the query messages, the base node multicasts the query messages over the network. Each time a particular query message is passed from one node to another, the TTL parameter value (e.g., network hop value) of that query message is decremented by one. (Col. 1, ll. 46-67; col. 2, ll. 1-18). The cited portion of *Hurst* explains that a particular query message is destroyed when its TTL parameter value falls to zero. (Col. 2, ll. 13-15). Thus, *Hurst* concludes that a network node that is far from the base node will likely not receive query messages having low TTL parameter values. (Col. 2, ll. 1-18; col. 6, ll. 58-60). In particular, *Hurst* states: “Specifically, some of the TTL query messages sent by computer 102A have TTL parameter values which are so low that these TTL query messages expire prior to reaching computer 102R.” (Col. 6, ll. 57-60). *Hurst* explains that the “lowest TTL parameter value of any TTL query message to reach” a particular node “is determined by TTL determining logic...to be the TTL distance between” the base node and the particular node. (Col. 7, ll. 5-8). Thus, *Hurst* describes a method for determining TTL distances between a base node and other nodes in a network.

Notably, there is nothing in *Hurst* that teaches, suggests, or discloses “multiplying the delay constant by” a network address. Merely describing a query with a TTL parameter does not teach, suggest, or disclose that “each of the plurality of nodes on the network calculates a respective delay period by *multiplying the delay constant by its own network address*” as recited in Claim 4. (Emphasis added). Because the cited references fail to teach, suggest, or disclose this aspect of Claim 4, the cited references fail to support the rejection.

For at least the foregoing reasons, Applicants respectfully request reconsideration and allowance of Claims 2-5, 7-11, 13-15, 18-20, 22-25, 27-30, 32-36, 38-40, and 42-45.

CONCLUSION

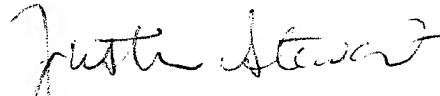
Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Justin N. Stewart, Attorney for Applicants, at the Examiner's convenience at (214) 953-6755.

Although no fees are believed to be due, the Commissioner is authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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